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Original Article

THE CONFLICT OF INTEREST BETWEEN PEOPLE AND CORPORATION IN THE CONSTRUCTION PROJECT OF APARTMENT IN YOGYAKARTA INDONESIA A SOCIO-LEGAL PERSPECTIVE

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ABSTRACT

Objective: *This Research has been conducted on the north side of Yogyakarta, Center for the Study of Human Rights and Democracy (CSHD), UniversitasAtma Jaya Yogyakarta. The early observation indicated that there were some rejections by the people toward the corporate activity, including apartment buildings, iron-sand mining and new airport development. The reason of the local people's rejection was the environmental damage, the negative impact of socio-cultural and the license-procedural manipulation that did not involve the people's approval. This rejection was followed by demonstration, public hearing with local parliament, and mass mobilisation that emerge the horizontal conflict between the people and corporation. The demonstration was responded by the corporation by criminalisation of community rights activist by using a legal claim on the property destruction. An activist was imprisoned by the law. The result of this phenomenon was the problem of social injustice due to the implementation of law and conflict resolution. Based on that, the purpose of this research is to know the implementation of law towards people and corporation in order to solve conflict of interest*

Methodology/Technique: *The method that is used in this research is action research, it is participative and collaborative, and that means to give the space with the purpose to reflect the researcher's observation about the social change toward justice.*

Findings: *There is no social justice in the conflict resolution between people and corporation which is deeply influenced by positivism. Legal positivism is only based on the deductive syllogism without seeing non positivism and legal paradigm that is, based on the material truth.*

Novelty: *This research indicates that positivism paradigm influence the legal consideration conflict of interest between people and corporation, that ignores non-juridical factors*

Type of Paper: *Review*

KEYWORDS: *Implementation of Law, Social Justice, Conflict Resolution, Corporation & People*

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INTRODUCTION

This research was a part of an action research that was conducted by the researcher. The researcher provided the advocation for several societies in the Special Region of Yogyakarta that had been in conflicts with the corporations since 2014 and continued until now. Since 2018 the corporation has invited the people to rent or to buy

the apartment that its construction process has caused a sequent of conflict with the local residents. Some construction projects that affected the environment and local residents' life caused the conflicts. Indonesia currently was still positioned as a developing country. The development was a part of the constitutional mandate (Republic of Indonesia's 1945 Constitution) which said that the country have a duty to bring the welfare and the social justice for all the people of Indonesia. The nature of the development encompassed the physical progress (food, clothing, housing) and the moral progress (education, sense of security, health, justice) and progress for all the people of Indonesia (Salim, 1993: 3).

Special Region of Yogyakarta (hereinafter referred to as Yogyakarta) was one of the provinces in Indonesia that was having a transformation towards a modern civilization based on trade and industrial activity. In point of fact, most of the Yogyakarta people, especially the people, who were living in villages, still relied their life on agriculture. Moreover the people that were living in the urban areas also still been having the type of agricultural society with their own local wisdom and local values. The conflictual phenomenon, in fact had occurred since the 18 century colonialism era when there was the industrial plantation booming in Java, in which there was a clash of cultures of the traditional power (namely the Javanese) against the colonial power (namely the Dutch) brought the modernization (Surjomihardjo. 2009).

With the rise of the global economic system and the Yogyakarta potentials, more investors and corporations contructed the industrialization projects in Yogyakarta. The industrialization project without good preparation and without good management, which were implemented towards the agricultural society, would rise the conflict intensity. These conflicts intensity were related with the land conversion, socio-cultural friction, environmental destruction and economic interest. There were three large scale conflicts in Yogyakarta. First, the conflict of the farmers in south coast against the mega iron sand mining project. Second, the conflict of the farmers which were associated with the Wahana Tri Tunggal community against the mega International Airport project. Third, the conflict of the villagers that lived around the hotel and apartment construction. The opposition from the people against the corporations in those construction projects were not caused by the residents to behave anti-development. The opposition was caused by the fact that the neighbourhood residents were affected by those constructions. The impacts could be in the form of the loss of jobs, the environment damages, the decline in quality of life and the loss of human rights.

In this situation, the government must provide protection for all citizens (Leyland, Peter and Gordon Anthony, 2009). In fact, the government tended to accommodate the investors and the corporations' interest through government's policies and regulations. It was apparent from the easy licensing terms for the corporations, the lack of monitoring function of the government and the lack of sanctions against violations committed by the corporation. In the other hand, there were emerging phenomenon of the corporations that used the criminal justice system to criminalize:

- The residents who fought for their rights and
- The human rights activists and environmental activists; which were considered "to interfere" the corporations' interest.

There was an irony at the time when it was supposedly the government duty to protect the right of citizens (people) but in fact the government policies violated the right of citizens. This research focused on the problems caused by the government policies. First, the implementation of the law on the settlement in the conflicts of interest of the people against the corporations could not create the social justice. Second, how the thought to create social justice on the settlement in the conflict of interest of the people against the corporations.

THEORETICAL FRAMEWORK

The Doctrine of Positivism

The positivism was originated from the natural science tradition in which were put the examined phenomenon as an object that could be controlled and generalisable (Santos, 1996: 14-15). The positivism was a doctrine that stated that a law must become something that were not in the meta juridical scope; but were in the objective, scope (specifically appear and read strictly) (Wignjosoebroto, 2002: 96). The doctrine of legal positivism considered a law in its concrete form; that was to say that the formal regulation (namely legislation) as a complete rule. So that the formal regulation must be enforced as it was or according to the text (*la bouche de la loi*). Nonetand Selznick said that a figure of modern law as the type of Autonomous Law with its distinctive character: a law was separated from politics, the rule of law supported the legal order, the procedure was the heart of the law, and the compliance with law understood as a perfect obedience (Nonet& Selznick, 1978: 54).

Historically the type of legal positivism emerged as needed to regulate the modern society in the 19th century. Alvin Tofler, in his book "The Third Wave", wrote that in the 19th century the society (in the context of Europa) experienced the transformation from the type of agricultural society to be the type of "industrial society". The model of legal positivism tended to ensure the legal decision which was suitable for the type of industrial society with the logical, rational, structure and bureaucratic thinking (Wisnubroto, 2010: 22-33). The doctrine of legal positivism was evident when the legal formulation tended to show the aspects of rationality (Cartesian) and on its legal use was similar with the mechanical machine (Newtonian) (Santos, 1995: 14).

The Power of Corporations

The existence of corporations could not be separated from the modern life of the modern society. Along with the rising existence of the global economic system that was based on the liberalism-capitalism ideology, the corporations were increasingly dominated the human life. In the liberalism-capitalist system, the "rule of the game" was based on a free competition. In this case, the government roles in providing a subsidy or a protection were very limited (Gunningham, 1974:39).

In the most of the developing countries that were commonly rich in natural resources, but had a lack of investment and had less human resources with professional and expert capacity. In this kind of condition, the corporations power (especially trans-national corporations/TNCs and multi-national corporations/MNCs) even looked "to co-opt" the government power. Marx said that the country with a superstructure was determined by the dynamics of relations and the production tool in the citizen infrastructure. The capitalistic economy determined the politics. In that situation, the corporation's interest could affect the government policies; starting from the level of legislation formulation up to the judicial process. Even when the corporations committed the crimes, as told by Steven Box, "Crimes of the powerful made respectable and invisible" (Box, 1983L 64-65). In this situation, usually the citizen had a very low bargaining power and were susceptible to become the victim of human rights violations.

METHODS

According to Stephen Kemmis, the action research was participatory and collaborative (Kemmis, Stephen, et.al, 2014). The action research also to connect the theory and the practice (Chambers, 1996). The action research was a derivative from the critical theory paradigm that took a position to be involved in an act of justice. In this research, the

researcher involved herself as a

- A partner for the citizen that were affected by the construction projects, and
- A partner for the parties which provided the advocacy for the society against the corporations.

In the research implementation, the collection and the analysis of the data used the approach of socio-legal research. In this research, the problem of law implementation was negatively examined; supported by empirical research by participatory observation. The primary data from the observation recordings, interviews, focus group discussions were combined with the secondary data that were collected through the legal materials research. Furthermore, these combined data would be qualitatively analyzed.

This research determined Yogyakarta as the site for this research. Yogyakarta had distinctive characteristic compared with other cities in Indonesia, such as the following. The citizens were plural and prismatic. The government system combined the concept of traditional leadership and the concept of modern government. A numerous number of universities with various experts and critical scholars. There were several frictions between the

- The local wisdom that was existing in the majority of the agricultural-traditional society and
- The ideology of liberalism-capitalism of corporations in the industrial-modern construction projects.

RESULTS

The Vortex of Conflicts

In this research, the conflict between the societies against the corporations in Yogyakarta were represented by three cases. First, the conflict of society of Galur District, Kulon Progo that were associated in Paguyuban Petani Lahan Pesisir (PPLP) against PT Jogja Magasa Iron (JMI) on the iron sand mining project. Second, the conflict of society of Temon District, Kulon Progo that were associated in Wahana Tri Tunggal (WTT) against the PT AngkasaPura I and GVK Power & Infrastructure (as an investor) on the New Yogyakarta International Airport (NYIA) mega project. Third, the conflict of the society of Karangwuni village, Sleman that were associated in the Paguyuban Warga Karangwuni Tolak Apartemen Uttara (PWKTAU) against PT Bukit Alam Permata (BAP) on the Uttara Apartment's construction project.

The case study was based on:

- The documented observation of the dialogue between the affected society with the company responsible for the project and party from District Government.
- The various local regulations (Perda) related to licensing.
- The various Regent's Decrees (Surat Keputusan Bupati) and Governor's Decrees (Surat Keputusan Gubernur) on the licensing related to the companies.
- The Administrative Court of Yogyakarta (Pengadilan Tata Usaha Negara Yogyakarta) Ruling Number 25/G/2015/PTUN. Yk in the case of Karangwuni Residents against Sleman District's Environmental Agency (Badan Lingkungan Hidup).
- The Supreme Court of the Republic of Indonesia Ruling Number 456K/TUN/2015 in the case of Temon residents against Yogyakarta Governor.

- The District Court of Wates Ruling Number 83/Pid.B/2011-PN.Wt in the case of Defendant Tukijo and
- The District Court of Sleman Ruling Number 420/Pid.B/2014-PN.Slm

In the case of Defendant Adjie Koesoemo bin Suryowilogo of those cases there was some similarity to the facts. First, the people that were supported by the Non-Governmental Organization, Human Rights Advocacy and Environment Activists opposed the mega project in their neighborhood. The opposition was based on the understanding that the mega project would cause the loss of the farmers' life, the damage caused to the environment, the loss of the right to a decent life, the loss of the socio-cultural system that were based on the local wisdom, the eviction of residents, and the indication of a violation of (justice) law. Second, the corporations that managed the projects, which were supported by the government, persisted with the argument that the constructed mega project would increase the public economy, create jobs, increase the Locally-Gererated Revenue (Pendapatan Asli Daerah - PAD) that would be implied on the increased welfare. The other arguments were that the mega project had been in accordance with the Spatial Plans (Rencana Tata Ruang Wilayah or RTRW) policy, be based on the environmental impact analysis, and did not break the law (regulation). Third, in the conflicts there were always found the involvement of the third parties with similar tactics, such as:

- The efforts to influence the people decision, both by doing subtle ways using promises or providing goods/facilities up with harsh ways using intimidation and threat
- Creating groups to support the projects, whether it came from the local people or even from the mass organization or from other cities
- Creating opinions that triggered the horizontal conflict among the people
- Forcing the people to sue through the courts and,
- To criminalize the people and the activists who supported the people

The Conflicts Settlements

In the conflict settlements, the corporations were always using the government policies based on the legislation, especially on the procedural technical regulations. The corporations and the government always objected to a more substantial argument; both the facts on the ground and the legal analysis that became the arguments with the people and the activist who supported the people.

Indonesia was one of the country in which its the legal system positioning the legislation as the primary source of law. Nevertheless, in the reality this legislation tended to be a product of politics. The politics basically were the tool interests of multiple parties, including the corporations and the governments. Mostly the society was in the difficult and weak position, therefore the society participations on making the regulation and policy were very low. Therefore, in the political process that resulting in the source of law (legislation), the process was dominated by the interest of the party which had a big power both political and economical. The following were the illustration on how the law of the conflict of the people against the corporations:

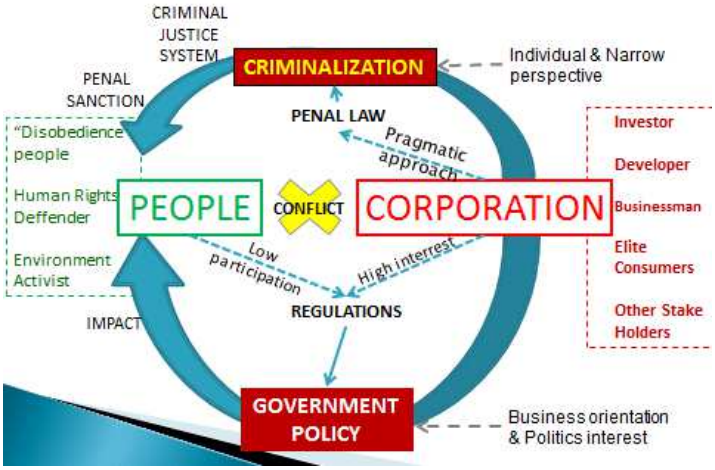

Figure 1: Legal Approach in the Conflict Resolution between People and Corporation

Based on those illustrations, it appeared that when the legislation (that was unfair) were textually implemented and based only on the legal logic (in a narrow sense: the legislation). Then whatever the result, it would always bring benefit the corporations; despite the government took a position as a policy maker, implementer, and a supervisor that had "neutral interests". Even when the conflict settlements were brought to the litigation process, the textually implementation of the law and the logic rules would bring benefit to the corporations; despite the judiciary always took it as an independent institution.

The phenomenon of criminalizing the parties that defended actions on the right of the people, but considered to interfere the corporations, often appeared in the conflict between the people against the corporations. This kind of phenomenon was also occurring in the three cases in this research in which the judges too easy to impose criminal sanctions to the parties that defended the peoples' rights. Theoretically Packer (1969: 366) emphasized that the use of criminal sanctions in indiscriminate and coercive ways actually made the criminal law as a prime threat. The result of this research pointed that the use of the criminal justice system of the corporations were not intended to overcome the crime, but rather as a way for the corporations to diminish the peoples' opposition.

DISCUSSIONS AND CONCLUSIONS

The finding of this research concluded that the law implemented in the conflict settlement of the affected people against the corporations tended to give benefit to the powerful parties. The government, from the legislatives (the legislation maker; namely DPRD), the executives (the District Government) and the judiciary (the Court) had always the standpoint that the policy or the ruling was always based on the law, not violated the regulation and corresponded to the Procedure. Even so, infact, those government stand point were unable to create the social justice or substantial justice. The analysis that was based on theoretical framework found the answer that the law implementation in various conflict settlement's forums of the people against the corporations always grounded in the doctrine of positivism; that were commonly used by the government and the judiciary.

The doctrine of positivism would shape the legal reasoning which was legalistic. This kind of legal reasoning emphasized the rational and logic's aspect which was atomizing, mechanical, deterministically and linear (Rahardjo, 2004: 35). When this kind of legal reasoning was used by the government in dealing with the conflict of the people against the

corporations thus the resulting policy tended to be unfair. The policies would bring benefit to the corporations to strengthen its position. Similarly, when the legal reasoning was used by the court in settling the disputes or the cases, that were caused by the conflict of the people against the corporations, the produced rulings would be based on the basic facts that were corresponded with the rule of law. This kind of rulings did not reflect the social justice; which was based on the complexity of social reality.

The conclusion, in the context of social justice, was that the law implementation that were based on the doctrine of positivism was not in accordance with the conflict settlements in the conflict of interest of the people against the corporations. The legal positivism was in accordance with the conflict settlements in the conflict that faces two parties having equal power. The legal positivism would be unfair to the most people in the developing countries (which in this research was Yogyakarta City, Indonesia) which had a weak power or even had no power at all of the disputes against the strong corporations (especially the multi-national companies/MNCs or trans-national companies/TNCs) that were supported by the government.

Therefore the law implementation with the approach of non-positivistic reasoning was needed. Several legal reasoning that was originated from some types of post-modernism law, such as Critical Legal Studies, Sociological Jurisprudence and Progressive Law in various discussions were considered as a means to create social justice and substantial justice. A further research was needed to research how those types of non-positivistic legal reasoning could be used as an alternative implementation juridical on the conflict settlements (which supported social justice) of the people against the corporations.

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